

1 WALTER BROOKS,

2 Plaintiff,

3 v.

4 HEATHER FONG, et al.,

5 Defendants.

6 No. C-07-2615 MEJ

7 **ORDER DENYING PLAINTIFF'S
MARSDEN MOTION**8 **ORDER FOR PARTIES TO FILE
JOINT STATUS REPORT**

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12 On May 31, 2011, Plaintiff Walter Brooks filed a "Marsden Motion." Dkt. No. 179. In his motion, Plaintiff contends that his counsel of record, Burke Hansen, has "breached the agreed upon contractual guidelines outlined in the contract for services" that was executed on June 15, 2009. Specifically, Plaintiff contends that counsel made decisions regarding nine motions filed by Defendants, without notifying Plaintiff of the motions. Plaintiff also contends that Mr. Hansen has avoided any contact with him. Plaintiff requests that the Court remove Mr. Hansen pursuant to *People v. Marsden*, 2 C.3d 118 (1970). A *Marsden* hearing is a state court proceeding in which a criminal defendant with appointed counsel argues that the attorney is not providing adequate representation and requests the appointment of new counsel. This case, however, is a civil action brought pursuant to 42 U.S.C. § 1983. "[T]here is no absolute right to counsel in civil proceedings." *Hedges v. Resolution Trust Corp. (In re Hedges)*, 32 F.3d 1360, 1363 (9th Cir. 1994) (citation omitted). Thus, Plaintiff's motion is not properly before this Court. *Rosenbalm v. Foulk*, 2010 WL 2764439, *6 (N.D. Cal. 2010) (denying motion for rehearing on *Marsden* motion, finding that the "motion should have been made, if at all, in [the plaintiff's] criminal case in state court"). Accordingly, Plaintiff's motion is DENIED.

13 In his motion, Plaintiff also requests a continuance of the trial in this case to prepare as a pro

1 se litigant or obtain new counsel. The Court shall not make any such determination now, but hereby
2 ORDERS the parties to file a joint status report by June 23, 2011.

3 **IT IS SO ORDERED.**

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5 Dated: June 2, 2011

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Maria-Elena James
Chief United States Magistrate Judge